

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant has failed to prove by a preponderance of the credible evidence that written claim was submitted in a timely fashion in this matter pursuant to K.S.A. 44-520a.

Claimant alleged a serious injury to his back, legs, chest, feet, shoulders, arms and head after a fall through a second-story floor to a concrete floor below on December 3, 1991. Claimant was provided treatment at the Newman Memorial Hospital Emergency Room in Emporia, Kansas, and later with Dr. H. Russell Bradley for his ongoing complaints. Dr. Bradley referred claimant to Dr. David J. Edwards, an orthopedic surgeon, on April 15, 1992, for a one-time consultation. Claimant was then returned to Dr. Bradley who later referred him to Dr. Philip E. Mills for a neurological consultation on April 19, 1992. This was also a one-time examination. Dr. Bradley continued to treat claimant until October 2, 1992, at which time claimant was working full time but still experiencing some pain. He was advised by Dr. Bradley to return in six months or as needed. Claimant did not return to see Dr. Bradley.

On November 3, 1993, claimant did go to Dr. Edwards for treatment of his left foot pain. The medical treatment through October 2, 1992, was paid for by the respondent and insurance carrier. The medical care in November 1993 was denied by the respondent and insurance carrier as being untimely and unauthorized. Claimant provided written claim for compensation on December 13, 1993. An employer's report of accident for the November 1991 accident was filed by the respondent on December 3, 1991, within 28 days of the accident pursuant to K.S.A. 44-557.

The claimant's time to make written claim for compensation is 200 days from the date of the accident or 200 days after the date of last payment of compensation pursuant to K.S.A. 44-520a.

Claimant cites the case of Sparks v. Wichita White Truck Trailer Center, Inc., 7 Kan. App. 2d 383, 642 P.2d 574 (1982), in support of his contention that his claim was timely made. Claimant argues that he had a reasonable expectation that the medical care by Dr. Edwards would be authorized for the feet. This contention is not well-supported by the evidence. Dr. Edwards was authorized for one examination only with the referral from Dr. Bradley. The authorized treating physician in this matter was always Dr. Bradley with periodic referrals to other specialists when needed. Dr. Bradley scheduled a follow-up appointment with the claimant six months from his October 2, 1992, examination, an appointment which claimant missed. If claimant had a reasonable expectation of continued medical care it would have been with Dr. Bradley and not with Dr. Edwards. Claimant's reasonable expectation of ongoing medical care would have ceased six months after October 2, 1992. If the Appeals Board computes 200 days from that six month date, the filing of the written claim in December 1993 would be well outside the 200 day limitation set forth in K.S.A. 44-520a.

By seeking treatment with a doctor who was authorized only for one examination claimant could not argue a reasonable expectation of payment by the employer. The medical examination on November 3, 1993, by Dr. Edwards would not constitute "payment of compensation" under the Act and would not extend the claimant's time to file his application for hearing.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated May 20, 1994, is affirmed in all respects and claimant, Par Patrick Weyrauch, is denied an award against respondent, Bunge Corporation, and its insurance carrier, Insurance Company of North America, due to claimant's failure to provide timely written claim pursuant to K.S.A. 44-520a.

IT IS SO ORDERED.

Dated this _____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Michael G. Patton, PO Box Q, Emporia, Kansas 66801
Vincent A. Burnett, 300 W Douglas, Suite 500, Wichita, Kansas 67202-2909
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director